

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MELVIN HODGES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

NO. CR98-0091JET  
C02-5008JET

ORDER

THIS MATTER comes on before the above-entitled Court upon Defendant's Motion for Relief From Judgment pursuant to Fed.R.Civ. P. 60(b) 4,6 [Ddkt no. 134], and Motion for Post-Conviction Rehabilitation Relief [Dkt no. 135].

Having considered the entirety of the records and file herein, the Court finds and rules as follows:

1. Defendant seeks reconsideration of his 2255 motion and re-sentencing based on United States v. Booker, 125 S.Ct. 738 (2005). Booker does not apply retroactively to cases that became final prior to January 12, 2005. Guzman v. United States, 2005 WL 80324 (2d Cir. N.Y.). Defendant's conviction became final prior to January 12, 2005. Accordingly, it is hereby

ORDERED that Defendant's Motion For Relief From Judgment is DENIED.

2. Defendant seeks a reduction in sentence based on his post-conviction rehabilitative

1 efforts. Defendant cites United States v. Booker, 125 S.Ct. 138, for this request. Departures based  
2 on post-conviction rehabilitative efforts have only been sanctioned where the Defendant is before the  
3 court for sentencing or resentencing. See United States v. Green, 152 F.3d 1202, 1207-08 (9<sup>th</sup> Cir.  
4 1998). Booker is inapplicable to this case, and there is no procedural basis for resentencing.  
5 Accordingly, Defendant's Motion For Post Conviction Rehabilitation Relief is DENIED.

6 IT IS SO ORDERED.

7 The clerk of the court is instructed to send uncertified copies of this Order to all counsel of  
8 record.

9 DATED this 12<sup>th</sup> day of May, 2005.

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11 /s JACK E. TANNER

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13 JACK E. TANNER  
14 SR. UNITED STATES DISTRICT JUDGE  
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